

PT 02-56

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE BABY ACADEMY, INC.,
APPLICANT,

v.

DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

No. 01-PT-0076
(00-16-1723)
P.I.N: 26-07-148-075

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Amos Smith, attorney at law, on behalf of The Baby Academy, Inc.; Mr. John Alshuler, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue.

SYNOPSIS: This proceeding raises the following issues: first, whether the applicant, The Baby Academy, Inc. (the "Applicant" or the Academy"), qualifies as an "institution of public charity" within the meaning of Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*; and second, whether real estate identified by Cook County Parcel Index Number 26-07-148-075 (the "subject property") was "exclusively used for charitable or beneficent purposes ...," as required by Section 15-65(a), during any part of the 2000 assessment year. The underlying controversy arises as follows:

Applicant filed a *pro-se* Real Estate Tax Exemption Complaint with the Cook County Board of Review (the "Board") on October 30, 2000. The Board reviewed the Complaint and recommended to the Department that subject property be exempt as of

October 5, 2000. The Illinois Department of Revenue (the “Department”), however, denied the exemption by means of a determination, dated August 30, 2001, which found that the subject property is not in exempt ownership and is not in exempt use. Applicant filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department’s initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department’s position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located in Chicago IL and improved with a one story building. *Id.*
4. Applicant’s authorized representative, Jacquelyn Curington, filed both the Real Estate Tax Exemption Complaint (the “Complaint”) and the Application for Property Tax Exemption (the “Application”) *pro-se* and submitted both documents to the Department without the assistance of counsel. *Id.*
5. Ms. Curington named “The Baby Academy, Inc.” (the “Academy”)/Rolando & Jacquelyn Curington” as applicants on both the Complaint and the Application, copies of which are attached hereto and incorporated by reference herein. *Id.*
6. At hearing, Ms. Curington testified that she was appearing as representative for the “Illinois Institute for Children, Inc.” (the “Institute”). Tr. pp. 10-11.

7. Ms. Curington did not name the Institute as applicant on either the Complaint or the Application. Dept. Group Ex. No. 1.
8. At hearing, applicant submitted Articles of Incorporation, by-laws, a 501(c) letter and other organizational documents that pertained to the Institute. It did not, however, submit any organizational documents that pertained to the Academy. Applicant Ex. Nos. 3, 4, 5; Tr. p. 15-18.¹
9. None of the organizational documents applicant submitted contain any reference to the Academy. *Id.*
10. Applicant did not submit any financial statements for either the Academy or the Institute.
11. The Academy obtained an undivided, 100% ownership interest in the subject property by means of a warranty deed dated October 5, 2000.² The Academy continuously maintained that interest until September 1, 2001, when it executed a quit claim deed conveying its interest in the subject property to the Institute. Applicant Ex. Nos. 1, 2.
12. The Academy used the subject property for numerous purposes including, *inter alia*, providing child care services and giving GED classes, after obtaining ownership of it. Tr. p. 24.

1. Counsel for the Department made no objection to the admission of these documents. Tr. pp. 15-17.

2. Ms. Curington testified that the Academy took title to the subject property as a trustee for the Institute. Tr. p. 13. However, analysis found, *infra*, at pp. 7-8 shall demonstrate that documentary evidence contained within the record does not support Ms. Curington's testimony.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code (35 **ILCS** 200/1-1 *et seq.*), which states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity

35 **ILCS** 200/15-65(a).

Like all statutes exempting property from taxation, Section 15-65(a) is to be strictly construed against exemption. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). For this reason, all doubtful factual questions and other debatable matters must be resolved in favor of taxation. *Id.* Therefore, applicant, which bears the burden of proof in all exemption matters, must satisfy a standard of clear and convincing evidence in order to prove that the relevant statutory exemption applies. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemption pertains to "institutions of public charity." The statutory requirements for this exemption are: (1) exempt ownership, meaning that the subject property must be owned by a duly qualified "institution of public charity;"

and, (2) exempt use, which means that the subject property must actually and primarily be used for purposes that qualify as “charitable.” 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

By definition, a charitable institution operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, *supra*.

Both the Real Estate Tax Complaint and the Departmental Application Form contained within Dept. Group Ex. No. 1 named “The Baby Academy, Inc.” and two private individuals, Rolando & Jacquelyn Curington as co-applicants. The Academy’s authorized representative, Jacquelyn Curington, completed both of these documents *pro-se* and submitted them without the assistance of counsel. As such, it appears that Ms. Curington failed to appreciate the following legal technicalities that govern all property tax exemptions:

Section 9-175 of the Property Tax Code states, in relevant part, that “[t]he owner of property ... shall be liable for the taxes of that year...[.]” 35 **ILCS** 200/9-175. Furthermore, Section 1-155 of the Property Tax Code defines the term “year” for Property Tax purposes as meaning a calendar year. 35 **ILCS** 200/1-155.

Each such “year” constitutes a separate cause of action for exemption purposes. People ex rel. Tomlin v. Illinois State Bar Ass’n, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980); Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981); Fairview Haven v. Department of Revenue, 153 Ill. App.3d 763 (4th Dist. 1987). Therefore, the one and only state of affairs that is relevant to this proceeding is the one that transpired between: (a) the date applicant assumed ownership of the subject property, October 5, 2000; and, (b) the last day of the 2000 assessment year, December 31, 2000.

The applicant, Academy, held an undivided, 100% ownership interest in the subject property throughout this period. As such, the Academy, which is the only entity that bears tax liability for this period,³ is the sole real party in interest to this proceeding. Therefore, the Academy, and no other entity, is charged with the burden of proof herein. 35 ILCS 200/15-65(a); Methodist Old People’s Home v. Korzen, *supra*.

The first step in analyzing whether the Academy sustained that burden requires examination of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). However, I am unable to make that examination in this case because the Academy failed to submit any organizational documents that pertain to itself. Furthermore, the entity for which the Academy *did* submit organizational documents, the Institute, is neither the nominal applicant nor the real party in interest herein.

Ms. Curington testified that the Academy took title to the subject property as a trustee for the Institute. (Tr. p. 13). However, the warranty deed whereby the Academy

3. See, 35 ILCS 200/9-175.

obtained its ownership interest in the subject property (Applicant Ex. No. 1) makes no mention of such a trust relationship. Nor does the quitclaim deed (Applicant Ex. No. 2), whereby the Academy conveyed that interest to the Institute, indicate that the Academy was acting as a trustee. Therefore, these documents fail to support Ms. Curington's testimony, as do the organizational documents that applicant submitted for the Institute.

These documents (Applicant Ex. Nos. 3, 5) make no reference to the Academy. Nor do they contain any other information disclosing the existence of a relationship between the Academy and the Institute.⁴ More importantly, the date of Incorporation shown on the Institute's Articles of Incorporation, January 16, 2001, fell nearly three and a half months *after* the date on which the Academy acquired ownership of the subject property, October 5, 2000. (Applicant Ex. Nos. 1, 5). Consequently, it was factually and legally impossible for the Academy to have acted as trustee for an entity that, from a legal perspective, did not exist at the time the Academy acquired ownership.

That entity, the Institute, did not attain any legally cognizable form of existence (i.e. corporation, partnership, etc.) on or before the last day of the 2000 assessment year, December 31, 2000. Thus, it remained factually and legally impossible for the Academy to have acted as a trustee for the Institute throughout the period currently under review. Because this period, and no other, is the only one presently at issue, any changes in either: (a) the Institute's legal status; and/or, (b) the state of title that occurred subsequent to December 31, 2000, are irrelevant herein. People ex rel. Tomlin v. Illinois State Bar Ass'n, *supra*; Jackson Park Yacht Club v. Department of Local Government Affairs,

4. For further analysis of interrelated entities and the exempt ownership requirement, *see*, People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944); Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981).

supra. Therefore, in the absence of any relevant evidence proving that the nominal applicant and real party in interest to this proceeding, the Academy, qualifies as an “institution of public charity,” there has been a failure of proof as to the statutory exempt ownership requirement in this case.

Applicant nevertheless argues that the facts in Care-O-Sel-Child Care and Education, Inc. v. the Illinois Department of Revenue, Docket No. 98-PT-0057, wherein the Department granted exemption to property used as a day care center for children, are “identical” to the present case. (Tr. p. 27). Like all Departmental recommendations, the Care-O-Sel-Child Care case has very minimal, if any precedential value because “each individual claim for exemption must be determined from the facts presented.” Methodist Old People's Home v. Korzen, *supra*, at 156.

More importantly, applicant may not raise equal protection or other issues related to the exempt status of other allegedly similar properties unless and until the applicant first proves that it qualifies for exempt status in its own right. Board of Certified Safety Professionals of the Americas Inc. v. Johnson, 112 Ill.2d 542, 548 (1986). The applicant Academy has not satisfied this threshold requirement for the reasons identified above. Therefore, its reliance on the recommendation in Care-O-Sel-Child Care is erroneous as a matter of law. *Id.* However, I would briefly note that the record in Care-O-Sel-Child Care contained organizational and financial documents that actually pertained to, and established the exempt status of, the two nominal applicants. Care-O-Sel-Child Care, *supra*, at pp. 3-4, 7.

All of the documentary and testimonial evidence⁵ contained within this record sought to prove the exempt status of an entity, the Institute, that is neither the nominal applicant nor the real party in interest herein. That entity also held no ownership interest, beneficial or otherwise, in the subject property throughout the period in question.⁶ Accordingly, unlike the Care-O-Sel-Child Care applicants, the allegedly exempt owner herein, the Institute, has no stake in the outcome of this case.

The case can also be distinguished from Care-O-Sel-Child Care in that the entity which is both: (a) the nominal applicant; and, (b) the real party in interest herein, the Academy, failed to submit any financial documents that would enable me to evaluate whether its financial structure is consistent with that of an “institution of public charity.” Absent this evidence, and in light of the foregoing, I conclude that this record bears absolutely no resemblance to the one compiled in Care-O- Sel-Child Care. Therefore, applicant’s reliance on the recommendation in that case is misplaced for legal and evidentiary reasons.

5. On pages 10 and 11 of the Transcript, Ms. Curington testifies as follows:

Q. [By applicant’s counsel] Please state the name of the legal entity that you are here on behalf of today?

A. [By Ms. Curington] Illinois Institute for Children

Q. What is your capacity with that entity?

A. I am president of the board of directors.

Q. Okay. So you are familiar with the legal documents relating to that entity?

A. Yes, I am.

Tr. pp. 10-11. *See also*, Applicant Ex. Nos. 3, 4, 5.

6. *See, supra*, at pp. 6-8.

Because the Care-O-Sel-Child Care recommendation is not controlling herein, it stands to reason that the subject property cannot be exempt merely because some of its uses may be similar in kind to those found exempt in Care-O-Sel-Child Care. Moreover, all of the above discussion concerning lack of exempt ownership applies with equal force to the exempt use requirement. Therefore, at the very least, it would be incongruous to conclude that the Institute, which had no recognized legal identity throughout the period under review, actually used the subject property for *any* purposes, charitable or otherwise, during that time.

Furthermore, because Section 15-65(a) requires *both* exempt ownership *and* exempt use,⁷ and the criteria for “charitable” ownership are identical to those for “charitable” use,⁸ an applicant’s failure to prove either one of these statutory requirements necessarily destroys its exemption claim as a whole. *Id.* Here, the applicant, Academy, has failed to prove that the subject property is in exempt ownership. Accordingly, whatever uses a non-exempt owner, such as applicant, makes of its own property fail to qualify as “charitable” in the first instance and do not alter the ultimate outcome of this case in the second. Therefore, the Department’s initial determination in this matter, denying the subject property exemption from 2000 real estate taxes under 35 ILCS 200/15-65(a), should be affirmed.

7. 35 ILCS 200/15-65(a); Methodist Old People's Home v. Korzen, *supra*.

8. See, discussion of Crerar v. Williams, 145 Ill. 625 (1893) and Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968), *supra*, at pp. 4-5.

WHEREFORE, for all the above-stated reasons, it is recommended that real estate identified by Cook County Parcel Index Number 26-07-148-075 remain subject to 2000 real estate taxes.

September 11, 2002

Date

Alan I. Marcus
Administrative Law Judge